

Appl. No. 10/069,849

Amendment dated April 21, 2004

Reply to Non-Final Office Action of October 21, 2004

#### REMARKS

Claims 18-40 were pending in this application prior to the submission of the present amendment. Claims 1-17 were previously canceled by preliminary amendment. The present amendment cancels claims 24 and 25.

Claims 18, 20-22, 28, 30-36 and 38 are rejected under 35 USC 102(b) as being anticipated by Grollier et al. (US 4,425,132). The foregoing amendment cancels claims 24 and 25 and incorporates their subject matter into independent claims 18 and 38. The amended claims now include the addition of a fiber-structure-improving agent within the ingredients of the first step. Grollier et al. do not disclose a two-step process for dyeing keratin fibers in which a fiber-structure-improving agent is one of the ingredients of the first step. Accordingly, it is respectfully submitted that this rejection may now be withdrawn.

Reconsideration is respectfully requested of the rejection of claims 19, 23, 29, 39 and 40 under 35 USC 103(a) in view of Grollier et al. While this reference discloses a two step process for coloring keratin fibers, it fails to disclose or even suggest that a keratin fiber structure improving agent may be incorporated into the ingredients used in the first step of this process. What this reference discloses is that the ingredients that are considered damaging to the hair, such as peroxides, are applied during the first step. The ingredients of the

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second step then include agents that can repair the damage, e.g., conditioners.

The Applicants have surprisingly found that they can include the keratin fiber structure improving agents in the ingredients of the first step with no degradation in the desired efficacy. It has been commonly accepted that the beneficial effects resulting from the use of such agents are compromised by some of the other ingredients contained in the formulation of the first step. Applicants have discovered that it is possible to include fiber structure improving agents in the first step without losing the beneficial effects provided by these agents. Grollier et al. do not teach or even suggest that the process of the present invention might have been possible.

Claims 24-27 and 37 are rejected under 37 USC 103(a) as being unpatentable over Grollier et al. in view of Nicolas-Morgantini et al. (US 5,954,871). It is respectfully submitted that one of ordinary skill in the art at the time of the present invention would not have been inclined to combine the two references that have been cited. Nicolas-Morgantini et al. disclose a wax-based cosmetic preparation that comprises only a single application step. Any colorants contemplated within the scope of their disclosure are "pigments" that have "film-forming properties" (please refer to column 1, lines 32-43). These pigments are quite different from the substantive and oxidative dyes of either Grollier et al. or Applicants' process. Substantive and oxidative dyes provide long-term coloration of keratin fibers. The

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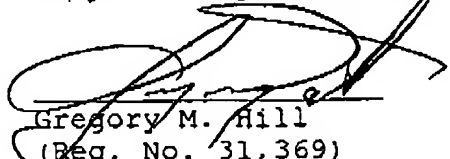
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preparations of Nicolas-Morgantini et al. are designed to be only a short-term colorant (please note the mascara example which is intended to perform its function for a single day). It is respectfully submitted that the combination of these two references thus fails to render obvious Applicants' claimed invention.

#### CONCLUSION

Applicants submit that the pending claims, as presently amended, set forth subject matter that is patentable over the grounds of rejection set forth in the outstanding Office Action. Accordingly, they respectfully request the issuance of all claims at bar. Applicants further ask for extension of the period for response to be extended three months to April 21, 2004 and authorize a charge to Deposit Account No. 01-1250 in the amount of \$950.00 for the extension fee. Order No. 04-0125. Should any fees be due for entry and consideration of this Amendment that have not been accounted for, the Commissioner is authorized to charge them to Deposit Account No. 01-1250.

Respectfully submitted,



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